STATE OF MICHIGAN

COURT OF APPEALS

PEOPLE OF THE STATE OF MICHIGAN, Plaintiff-Appellee,	UNPUBLISHED July 17, 2008
v	No. 278981 Kent Circuit Court
ARTISS REGINALD WILLIAMS, Defendant-Appellant.	LC No. 06-009898-FC

Before: Saad, C.J., and Fort Hood and Borrello, JJ.

PER CURIAM.

Following a jury trial, defendant was convicted of six counts of first-degree criminal sexual conduct, MCL 750.520b(1)(e) (actor armed with a weapon), and two counts of unlawful imprisonment, MCL 750.349b. He was sentenced as an habitual offender, fourth offense, MCL 769.12, to concurrent prison terms of 25 to 75 years for each CSC conviction, and 10 to 22-1/2 years for each unlawful imprisonment conviction. He appeals as of right. We affirm.

I. Basic Facts

On September 18, 2006, at approximately 3:30 a.m., defendant solicited CM to engage in an act of prostitution in exchange for $20. Once at defendant's home, defendant told CM to wait in the bedroom. CM noted that defendant was "nice" during the drive. When defendant came into the bedroom, he "jumped on top of [her]" while holding a "big ole knife."[1] Defendant said, "[you] just got played," and directed CM to strip and be an "actress." When CM started shaking and crying, defendant threatened to harm her if she refused to calm down. CM explained that she "had to act like [she] was [defendant's] woman for hours."[2] Defendant "made" CM kiss him and perform oral sex on him. Defendant had sexual intercourse with CM without protection, and "sucked" her breasts, vagina, and feet. After nearly four hours, defendant drove CM to a

[1] The police seized some "larger knives" from defendant's home. When CM was shown one of the knives, she indicated that the item looked like the knife defendant used, but opined that the actual knife was longer. It was noted for the record that CM "gasped and started crying" when she saw the knife at trial.

[2] Defendant was drinking alcohol during the episode.

location that she specified. CM subsequently reported the incident to the police, and provided the police with defendant's license plate number, description, and first name. A police witness described CM as "distraught, crying, upset," and "having a hard time communicating."

CH testified that on September 18, 2006, at about 8:30 a.m., defendant solicited her to engage in an act of prostitution in exchange for $40. Defendant drove CH to his home and directed her to wait in his bedroom. Defendant came into the bedroom with a "butcher knife,"[3] pushed her down on the bed, and directed her to be a good actress and do exactly as he instructed. Defendant threatened her and cautioned that no one would believe her claims because she is a prostitute. Defendant then sucked her breasts, performed oral sex on her, forced her to perform oral sex on him,[4] sucked her toes, touched the inside of her vaginal area with his hands, and had sexual intercourse with her. During this time, defendant drank liquor and took "some type of prescription drug." After the incident, defendant drove CH to the pickup location, and she subsequently called the police. A police witness described CH as "distraught," "crying and upset," and fearful of being arrested for prostitution.

The complainants did not know each other and only saw each other in court in relation to this case. CM explained that she and CH operated on "two different sides of town." A police witness explained that, as the police were questioning defendant in relation to CM, they received an additional report with similar facts and ultimately connected the two assaults.

When questioned by the police, defendant initially denied that anyone was at his home at the time of the offenses, but subsequently admitted to having sexual relations with both complainants without the use of a knife. At trial, the defense asserted that the complainants were crack cocaine users,[5] they voluntarily engaged in sexual relations with him, he did not have a knife, and that they falsely accused him after he did not pay for their services.[6]

II. Ineffective Assistance of Counsel

Defendant argues that defense counsel was ineffective for failing to request a jury instruction on the defense of consent, CJI2d 20.27. Because defendant failed to raise this issue in the trial court in connection with a motion for a new trial or an evidentiary hearing, this Court's review is limited to mistakes apparent on the record. *People v Ginther*, 390 Mich 436,

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[3] When CH was shown one of the large knives seized from defendant's home, she said "that would be the knife or similar to it." CH shook and cried when she was shown the knife.

[4] After oral sex, defendant ejaculated in CH's mouth.

[5] CH testified that although she used crack cocaine on the prior evening, when this incident occurred, she "wasn't even high anymore, that was way before." She denied hallucinating the events.

[6] When CM was asked if she created this story because of defendant's failure to pay, she indicated that "there's a difference between being [r]aped and robbed." If she is robbed and not hurt, she would "let it go." But when her "life is in jeopardy," the perpetrator will do it to somebody else and needs to be stopped. CH testified that, as a prostitute, if you do not get paid, "you just don't," and that people have failed to pay before.

443; 212 NW2d 922 (1973); *People v Sabin (On Second Remand)*, 242 Mich App 656, 658-659; 620 NW2d 19 (2000).

Effective assistance of counsel is presumed and the defendant bears a heavy burden of proving otherwise. *People v Pickens*, 446 Mich 298, 302-303; 521 NW2d 797 (1994); *People v Effinger*, 212 Mich App 67, 69; 536 NW2d 809 (1995). To establish ineffective assistance of counsel, a defendant must show that counsel's performance was below an objective standard of reasonableness under prevailing norms and that the representation so prejudiced the defendant that there is a reasonable probability that, but for counsel's error, the result of the proceedings would have been different. *Id.*

"A defendant is entitled to have his counsel prepare, investigate, and present all substantial defenses." *People v Kelly*, 186 Mich App 524, 526; 465 NW2d 569 (1990). A defense is substantial if it might have made a difference in the outcome of the trial. *People v Hyland*, 212 Mich App 701, 710; 538 NW2d 465 (1995), vacated in part on other grounds 453 Mich 902 (1996).

Each complainant testified that defendant forced her to remain in his home for hours and engage in numerous sexual acts by threatening her with a large knife, and that she was afraid that defendant would harm her with the knife. In pointed contrast, at trial, defendant denied having a knife, and argued that both complainants engaged in the sexual acts voluntarily and falsely accused him because he did not pay. A request for an instruction on the defense of consent would have been reasonable if defendant admitted his possession of a knife and argued that the complainants consented to engage in the sexual acts while he brandished the knife. On appeal, defendant ignores the deficiency in the evidence when he states: "It is unlikely that, for a prostitute, having sex with someone armed with a weapon is always inconsistent with the sex being consensual." Because there was no evidence to support a theory that defendant displayed a knife as part of the sexual episodes to which the complainants consented, we are not persuaded that defense counsel's failure to request an instruction on the defense of consent was below an objective standard of reasonableness.

III. Sufficiency of the Evidence

Defendant further argues that there was insufficient evidence to sustain his conviction of first-degree CSC on the basis of a digital penetration of CH. We disagree. When ascertaining whether sufficient evidence was presented at trial to support a conviction, this Court must view the evidence in a light most favorable to the prosecution and determine whether a rational trier of fact could find that the essential elements of the crime were proven beyond a reasonable doubt. *People v Wolfe*, 440 Mich 508, 515; 489 NW2d 748 (1992), amended 441 Mich 1201 (1992). This Court will not interfere with the trier of fact's role of determining the weight of evidence or the credibility of witnesses. *Id.* at 514. "[A] reviewing court is required to draw all reasonable inferences and make credibility choices in support of the jury verdict." *People v Nowack*, 462 Mich 392, 400; 614 NW2d 78 (2000).

As applicable to this case, a "person is guilty of criminal sexual conduct in the first degree if he or she engages in sexual penetration with another person" while "armed with a weapon." MCL 750.520b(1)(e). "Sexual penetration" is defined as "sexual intercourse, cunnilingus, fellatio, anal intercourse, or any other intrusion, however slight, of any part of a

person's body or of any object into the genital or anal openings of another person's body. . . ." MCL 750.520a(p).

Defendant argues that there was no evidence of digital penetration introduced at trial. Defendant relied on the following exchange during the direct examination of CH:

> *Q*. Do you recall whether or not he used his hands in any way?
>
> *A*. I'm sure he might have touched my, my outside vaginal area at some point.
>
> *Q*. Did anything other than his mouth go beyond the outer lips of your vaginal area?
>
> *A*. Not that I can remember, no.

On redirect examination, however, CH was shown her preliminary examination testimony and indicated that it refreshed her recollection.[7] She then testified that, in addition to performing the acts of oral sex, defendant touched the "outer area" of her vagina but "his fingers never entered inside." When asked what specific area defendant was touching, she testified that defendant used his hands to touch "the clitoral area." This evidence, viewed in a light most favorable to the prosecution, was sufficient to permit a rational trier of fact to reasonably infer that defendant digitally penetrated the complainant's genital opening. An intrusion into the labia constitutes penetration of the female genital opening under MCL 750.520a(p). *People v Bristol*, 115 Mich App 236, 238; 320 NW2d 229 (1981); see also *People v Legg*, 197 Mich App 131, 133; 494 NW2d 797 (1992) (the act of cunnilingus described by the complainant involved penetration because she testified that the defendant touched the part of her body that she "[went] to the bathroom with"). Furthermore, there is no requirement that physical evidence or eyewitnesses corroborate the complainant's testimony. Rather, a complainant's uncorroborated testimony is sufficient to convict a defendant of CSC. MCL 750.520h; *People v Lemmon*, 456 Mich 625, 632 n 6; 576 NW2d 129 (1998). The evidence was sufficient to sustain defendant's conviction.

Affirmed.

/s/ Henry William Saad
/s/ Karen M. Fort Hood
/s/ Stephen L. Borrello

[7] At the preliminary examination, CH testified that defendant "took his hand . . . and played with [her] vaginal area." He rubbed "the clitoral area and stuff" and put his fingers "[i]n between the lips but not entering into the vagina."